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BAKEMEIER, P.C.

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JUL 03 2008

**Environmental
Cleanup Office**

July 3, 2008

VIA HAND DELIVERY


Claire Hong
Remedial Project Manager
U.S. Environmental Protection Agency, Region 10
Office of Environmental Cleanup, Mail Code ECL-111
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

Re: Lower Duwamish Waterway Superfund Site
Response by American Civil Constructors West Coast, Inc.
to EPA's 104(e) Information Request
Directed to American Civil Constructors

Dear Ms. Hong:

Enclosed please find the Response by American Civil Constructors West Coast, Inc. to EPA's CERCLA Section 104(e) information request dated January 18, 2008, regarding the Portland Harbor Superfund Site directed to American Civil Constructors including attachments. Please note that Attachments A, B, and C contain information designated as "confidential business information."

Very truly yours,


Robert F. Bakemeier

Enclosure

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Environmental
Cleanup Office

Response by American Civil Constructors West Coast, Inc. ("Respondent") to EPA's CERCLA Section 104(e) information request regarding the Lower Duwamish Waterway Superfund Site directed to American Civil Constructors, Inc.

Response Date: July 3, 2008

NOTE: THIS RESPONSE CONTAINS "CONFIDENTIAL BUSINESS INFORMATION" IN ATTACHMENTS A, B, and C (SEE RESPONSES TO #4 and #5).

General Introduction to Response:

American Civil Constructors West Coast, Inc. ("Respondent") provides this response to EPA's 104(e) request directed to American Civil Constructors, Inc. seeking information regarding the time frame from 2000 to the present regarding the "Site" known as the Lower Duwamish Waterway (Seattle, Washington) and the address/property/facility identified by EPA as 700 South Riverside Drive, Seattle, Washington 98101 (referred to in this response as "700 South Riverside Drive") (please note that Respondent lacks information to verify the accuracy of the King County Tax Parcels' numbers identified by EPA—i.e., 7327905350, 7327905725, 7327905760, 7327906645, 7327906755). As indicated below, Respondent leases property at 700 South Riverside Drive, as well as at 620 South Riverside Drive and 582 South Riverside Drive, all located adjacent to the Lower Duwamish Waterway. Respondent is a wholly owned subsidiary of American Civil Constructors, Inc.

EPA should conclude that Respondent is not a "potentially responsible party" ("PRP") for the Lower Duwamish Waterway Superfund Site based upon the information summarized below, and the complete lack of any evidence that Respondent's limited activities, occurring only since June of 2002, at 700 South Riverside Drive and 620 South Riverside Drive, and only since July 2, 2006, at 582 South Riverside Drive, contributed any hazardous substances to the Lower Duwamish Waterway's sediments. EPA should not rely upon mere speculation to add Respondent to the list of Lower Duwamish Waterway Superfund Site PRPs—there is absolutely no basis for asserting that Respondent is liable, or potentially liable, under CERCLA.

Clarification—Information Provided in Respondent's Response to EPA's 104(e) Information Request.

Respondent has sought out and summarized/produced in this response information and documents within Respondent's possession, custody and control, and from Respondent's corporate "parent" American Civil Constructors, Inc. Respondent understands that EPA has issued CERCLA 104(e) information requests for the Lower Duwamish Waterway Superfund Site to other individuals and entities that own, or have previously been associated with, the properties located at 700 South Riverside Drive, 620 South Riverside

Drive, and/or 582 South Riverside Drive, including Harald Hurlen and Hurlen Construction. Respondent has not sought out information from those persons and entities. Respondent cannot engage in speculation as to what other information or records might be "available" to Respondent from sources not within Respondent's possession, custody or control, and thus Respondent objects to the instructions provided with EPA's 104(e) information request to the extent that they instruct Respondent to do so.

Please note that, in responding to #2(e) (seeking "all documents pertaining to sale, transfer, delivery, disposal, of any hazardous substances, scrap materials, and/or recyclable materials to [the properties identified above]"), Respondent has produced with this response examples of the documentation that is generated when Respondent transships construction and demolition debris through 700 South Riverside Drive (see **Attachments 6 and 7**). Furthermore, in the response to #2(e), below, Respondent has described the pertinent types of construction and demolition debris, and how such materials are handled when they are transshipped through 700 South Riverside Drive. As indicated in response to #2(e) (and in discussions with EPA about this matter), locating, duplicating, and producing all such documentation would involve a very significant burden and expense to Respondent, and Respondent believes that such efforts would not yield meaningful information. Accordingly, Respondent objects to #2(e) as unduly burdensome, overbroad, and unreasonable. Without waiver of those objections, Respondent has produced information and documents that Respondent believes sufficiently respond to #2(e), and Respondent is prepared to proceed incrementally to address #2(e). While Respondent is amenable to discussing with EPA the production of additional documentation pertinent to such activities, Respondent suggests that EPA first consider whether additional documents would provide any meaningful information. On July 1, 2008, Respondent's counsel (Robert F. Bakemeier) discussed this issue with EPA's Assistant Regional Counsel (Alexander Fidis) and EPA's Project Manager for the Lower Duwamish Waterway Superfund Site (Claire Hong), and agreed to this incremental approach to #2(e), whereby EPA will review the example documents and the information provided in this 104(e) response, and consider whether EPA will seek additional documents regarding #2(e) from Respondent.

Respondent submits this response while reserving all rights and defenses, without waiver of any arguments or claims it may assert, and without admitting any responsibility, fault or liability pertinent to Respondent or any other party. Furthermore, Respondent submits this response while reserving the confidentiality of all communications subject to attorney/client privilege, work product protection, and/or any other protection from disclosure, and this response should not be construed in any way as a waiver of Respondent's claims to such confidentiality.

The questions set forth in EPA's 104(e) information request to American Civil Constructors, Inc. are reproduced below, followed by Respondent's response to each question. Respondent reserves the right to supplement this response, as may be appropriate.

1. **Respondent Information**

- a. Provide the full legal name and mailing address of the Respondent.

Response:

American Civil Constructors West Coast, Inc.
700 South Riverside Drive
Seattle, Washington 98108

- b. For each person answering these questions on behalf of Respondent provide:

- i. full name;
- ii. title;
- iii. business address;
- iv. business telephone number and FAX machine number.

Response:

Clyde Joseph, assisted by counsel
Vice President and General Manager
American Civil Constructors West Coast, Inc.
700 South Riverside Drive
Seattle, Washington 98018
Telephone: 206-764-8112
Fax: 206-762-1854

- c. If Respondent wishes to designate an individual for all future correspondence concerning this Site, please indicate here by providing that individual's name, address, telephone number and fax number.

Response:

Clyde Joseph
American Civil Constructors West Coast, Inc.
700 South Riverside Drive
Seattle, Washington 98018
Telephone: 206-764-8112
Fax: 206-762-1854
Email: CJoseph@accbuilt.com

AND

Robert F. Bakemeier
Bakemeier, P.C.
7683 S.E. 27th Street, Suite 464
Mercer Island, Washington 98040
Telephone: 206-230-0600
Fax: 206-230-0602
Email: rfb@rflaw.com

- d. State the dates during which Respondent held any property interests at or within one-half mile of the above mentioned address.

Response: Respondent interprets this question to seek information regarding the address identified by EPA as 700 South Riverside Drive, Seattle, Washington. Respondent lacks information to verify the accuracy of the King County Tax Parcels' numbers identified by EPA (i.e., 7327905350, 7327905725, 7327905760, 7327906645, 7327906755).

Effective as of June 7, 2002, Respondent took an assignment of a lease pertaining to the real properties at 700 South Riverside Drive and at 620 South Riverside Drive, and has continued to lease those properties from Harald L. Hurlen to the present. A copy of that lease is provided with this response as **Attachment 1**. Respondent also has leased the real property at 582 South Riverside Drive from July 2, 2006 to the present. Respondent leases that property pursuant to an oral month-to-month lease agreement between Respondent and Cascade Barge and Equipment, LLC. Note that the three properties leased by Respondent are not contiguous—they are separated from one another by other properties not owned, leased, or used by Respondent.

- e. State the dates during which Respondent conducted any business activity at or within one-half mile of the above mentioned address.

Response: Respondent interprets this question to seek information regarding the address identified by EPA as 700 South Riverside Drive, Seattle, Washington. The information sought in #1(e) is provided in response to #1(d).

- f. Describe the nature of Respondent's business activities at the above mentioned address or within one-half mile of that address.

Response: Respondent interprets this question to seek information regarding the address identified by EPA as 700 South Riverside Drive, Seattle, Washington.

700 South Riverside Drive. Since June 7, 2002, Respondent has leased 700 South Riverside Drive as its headquarters for managing and supporting marine construction projects accomplished by Respondent at other locations in the

Northwest and Alaska. Marine construction projects accomplished elsewhere are coordinated by personnel working in offices located at 700 South Riverside Drive. In addition to offices and vehicle parking areas, the upland property at 700 South Riverside Drive is used by Respondent for the storage and transshipment of construction materials and equipment necessary to accomplish construction projects occurring elsewhere. The shoreline and moorage facilities at 700 South Riverside Drive are used by Respondent for the moorage of barges and the storage and transshipment via the Lower Duwamish Waterway of construction materials and equipment necessary to accomplish construction projects occurring elsewhere. The property is also used for the storage, maintenance, and repair of equipment used at 700 South Riverside Drive and used at construction project occurring elsewhere.

620 South Riverside Drive. Since June 7, 2002, Respondent has leased 620 South Riverside Drive (a fenced lot without structures) for upland storage of construction materials and equipment necessary to accomplish construction projects elsewhere. Such construction materials and equipment are delivered to and removed from the upland property at 620 South Riverside Drive by trucks and via the streets adjacent to that property (i.e., not via the Lower Duwamish Waterway). The moorage facilities at 620 South Riverside Drive are used by Respondent for the moorage of barges. The moorage and water-dependent facilities at 620 South Riverside Drive are not used by Respondent for the transshipment of construction materials and equipment.

582 South Riverside Drive. Since July 2, 2006, Respondent has leased 582 South Riverside Drive (a fenced lot without structures) for upland storage of construction materials and equipment necessary to accomplish construction projects elsewhere. Such construction materials and equipment are delivered to and removed from 582 South Riverside Drive by trucks and via the streets adjacent to that property (i.e., not via the Lower Duwamish Waterway). Respondent does not utilize any moorage or water-dependent facilities at 582 South Riverside Drive.

- g. In relation to your answer to the previous question, identify all materials used or created by your activities at the above mentioned address, including raw materials, commercial products, building debris, and other wastes.

Response: Respondent interprets this question to seek information regarding the address identified by EPA as 700 South Riverside Drive, Seattle, Washington, and the properties identified by Respondent as 620 South Riverside Drive and 582 South Riverside Drive.

Respondent does not "create," and has not "created" any materials at 700 South Riverside Drive, 620 South Riverside Drive, or 582 South Riverside Drive. Given that construction materials are transshipped through 700 South Riverside Drive (and construction materials are stored at 620 South Riverside Drive and 582

South Riverside Drive) by Respondent, all for use elsewhere in construction projects, Respondent does not "use" such construction materials at 700 South Riverside Drive, 620 South Riverside Drive, or 582 South Riverside Drive. Such transshipped and stored construction materials have included the following: metal materials and components (primarily steel and aluminum), concrete, concrete floats with plastic and/or Styrofoam inserts, treated and untreated wood products (e.g., timber pilings, lumber, etc.), diesel oil, and fuels.

In the course of transshipping such construction materials, moving such stored construction materials, and moving, repairing, and maintaining equipment used in such activities and in construction projects, Respondent does use some materials at 700 South Riverside Drive, such as fuels (diesel and gasoline), lubricating oils, grease, hydraulic fluids, transmission fluids, filters, antifreeze, cleaning fluids, paints, etc. An inventory list of such materials is provided with this response as **Attachment 2**. Products containing hazardous substances, fuels, and oils used by Respondent at 700 South Riverside Drive and 620 South Riverside Drive (or delivered to 700 South Riverside Drive for use elsewhere) are summarized (by specific products and by quantities) in "Quarterly Hazardous Materials Control Reports." These reports also include volumes of waste oils gathered at 700 South Riverside Drive for off-site recycling. Copies of all such reports in Respondent's possession that have been generated from 2002 to the present are provided with the response as **Attachment 3**. All such materials and products containing hazardous substances have been handled carefully with any resulting wastes being containerized for proper off-site recycling and/or disposal.

The offices and bathrooms located at 700 South Riverside Drive use materials typical of any office and bathroom, such as paper products, offices supplies, copy machine materials, cleaning materials, etc.

Construction and demolition debris generated during projects occurring at other locations has been delivered to 700 South Riverside Drive by barge for transshipment through 700 South Riverside Drive for recycling or disposal elsewhere. Such construction and demolition debris have included the following: scrap metal, timber pilings, lumber, concrete, and concrete floats with plastic and/or Styrofoam inserts. Such building and construction debris have not been transshipped or stored at 620 South Riverside Drive or at 582 South Riverside Drive.

Materials recycled or disposed from Respondent's construction projects are delivered to 700 South Riverside Drive by barges, generally in containers unless practical to handle the materials individually (e.g., timber pilings). Such containers and materials are carefully offloaded from the barges and transferred to trucks for transportation to off-site locations for recycling or disposal, all in compliance with applicable environmental laws. Respondent is aware of no instance in which any such materials have been spilled into the Lower Duwamish

Waterway since Respondent's activities began at 700 South Riverside Drive on June 7, 2002.

In one project accomplished in 2003, dredged sediments from the Puget Sound Resources Superfund Site, Marine Sediments Unit, Remedial Action were delivered by barge to 700 South Riverside Drive and were transshipped through 700 South Riverside Drive for disposal at the Rabanco Roosevelt Regional Landfill. The project was accomplished pursuant to a Remedial Action Management Plan for Contract Number DACW67-03-C-0012, approved by EPA and the United States Army Corps of Engineers, and the activities were accomplished under on-site observation and supervision by Corps of Engineers personnel, in coordination with EPA. Respondent is aware of no instance in which any such dredged materials were spilled into the Lower Duwamish Waterway during that project. Pursuant to the applicable Remediation Action Management Plan, and pursuant to EPA and Corps of Engineers oversight, protective measures were implemented and dredged sediments were handled to prevent spillage and/or releases of the dredged sediments during transfer from barges to sealed trucks and trailers at 700 South Riverside Drive.

All wastes that have been generated by Respondent's activities occurring at 700 South Riverside Drive, 620 South Riverside Drive, and 582 South Riverside Drive have been collected in containers for appropriate off-site disposal, as follows. Solid wastes, such as office waste paper, garbage, trash, etc. have been placed in containers and dumpsters for regular collection by disposal contractors (Waste Management) and transport to an appropriate off-site landfill(s). Waste oils and antifreeze have been placed in above-ground storage containers located at 700 South Riverside Drive for regular collection and off-site recycling by Waste Management.

The bathroom facilities at 700 South Riverside Drive yield sanitary sewage that is routed to the municipal sewage system.

- h. If Respondent, its parent corporation, subsidiaries or other related or associated companies have filed for bankruptcy, provide:
 - i. the U.S. Bankruptcy Court in which the petition was filed;
 - ii. the docket numbers of such petition;
 - iii. the date the bankruptcy petition was filed;
 - iv. whether the petition is under Chapter 7 (liquidation), Chapter 11 (reorganization), or other provision; and
 - v. a brief description of the current status of the petition.

Response: Not applicable.

2. Site Activities and Interests

- a. Provide all documents in your possession regarding the ownership or environmental conditions of the property mentioned above, including, but not limited to, copies of deeds, sales contracts, leases, blueprints, "as-builts" and photographs.

Response: Respondent interprets this question to seek information regarding the property identified by EPA as 700 South Riverside Drive, Seattle, Washington, and the properties identified by Respondent as 620 South Riverside Drive and 582 South Riverside Drive. Respondent does not own those properties, and thus does not possess documents regarding ownership. A copy of Respondent's lease pertaining to 700 South Riverside Drive and 620 South Riverside Drive is provided with this response as **Attachment 1**. The lease for 582 South Riverside Drive is an oral month-to-month lease.

Copies of documents pertinent to a recent diesel fuel spill (approximately three to five gallons) at 700 South Riverside Drive are provided with this response as **Attachment 4**. That diesel spill event was an isolated event that occurred on April 23, 2008, when a diesel fuel tank located on the wharf was hit by a fork lift, causing a valve to open partially. The valve was closed almost immediately, and the storage tank was removed from the wharf, but three to five gallons of diesel fuel spilled onto the wharf and into the Lower Duwamish Waterway. A containment boom was deployed in the water and absorbent materials were used to remove the diesel fuel from the surface of the water. Respondent reported the spill to the National Emergency Spill Response Center, the Washington Department of Ecology, and the United States Coast Guard. Both the Washington Department of Ecology and the United States Coast Guard responded to 700 South Riverside Drive and inspected the situation. According to the Washington Department of Ecology field report (included in **Attachment 4**): "[Respondent had] no previous history [of spills], [and the event was the subject of] proper notification & cleanup."

- b. Provide information on the condition of the property when purchased; describe the source, volume, and content of any fill material used during the construction of the buildings, including waterside structures such as seawalls, wharves, docks, or marine ways.

Response: Respondent interprets this question to seek information regarding the property identified by EPA as 700 South Riverside Drive, Seattle, Washington, and the properties identified by Respondent as 620 South Riverside Drive and 582 South Riverside Drive. As indicated above, Respondent leases those properties. Respondent has not purchased any of those properties, and thus does not possess

such information. Respondent has not been involved in any filling or construction at those properties, and thus does not possess such information.

- c. Provide information on past dredging or future planned dredging at this site.

Response: Respondent interprets this question to seek information regarding past and future dredging at or associated with the property identified by EPA as 700 South Riverside Drive, and the properties identified by Respondent as 620 South Riverside Drive and 582 South Riverside Drive. Respondent lacks information regarding any past dredging at those properties, except as follows. Respondent has located in its records a document containing an email exchange involving former employees of Respondent that occurred in June of 2003, describing dredging of approximately 15,000 cubic yards of sediment that occurred adjacent to 700 South Riverside Drive in approximately September of 1998. A copy of that document is provided with this response as **Attachment 5**. Respondent lacks information regarding any future planned dredging at those properties, if any. Respondent understands that Lower Duwamish Waterway maintenance dredging was accomplished recently near those properties by Manson for the United States Army Corps of Engineers.

- d. Provide a brief summary of the activities conducted at the site while under Respondent's ownership or operation. Include process diagrams or flow charts of the industrial activities conducted at the site.

Response: Respondent interprets this question to seek information regarding 700 South Riverside Drive, 620 South Riverside Drive, and 582 South Riverside Drive. Respondent has not owned, and does not own, any of those properties. The information sought in #2(d) regarding Respondent's activities at those properties is provided in response to #1(f).

- e. Provide all documents pertaining to sale, transfer, delivery, disposal, of any hazardous substances, scrap materials, and/or recyclable materials to this property.

Response: *Please note that, in responding to #2(e) below, Respondent has produced with this response examples of the documentation that is generated when Respondent transships construction and demolition debris through 700 South Riverside Drive. Furthermore, in the response to #2(e), below, Respondent has described the pertinent types of construction and demolition debris, and how such materials are handled when they are transshipped through 700 South Riverside Drive. Locating, duplicating, and producing all such documentation would involve a very significant burden and expense to Respondent, and Respondent believes that such efforts would not yield meaningful information. Accordingly, Respondent objects to #2(e) as unduly burdensome, overbroad, and unreasonable. Without waiver of those objections, Respondent has produced information and documents that Respondent believes sufficiently respond to #2(e),*

and Respondent is prepared to proceed incrementally to address #2(e). While Respondent is amenable to discussing with EPA the production of additional documentation pertinent to such activities, Respondent suggests that EPA first consider whether additional documents would provide any meaningful information. On July 1, 2008, Respondent's counsel (Robert F. Bakemeier) discussed this issue with EPA's Assistant Regional Counsel (Alexander Fidis) and EPA's Project Manager for the Lower Duwamish Waterway Superfund Site (Claire Hong), and agreed to this incremental approach to #2(e), whereby EPA will review the example documents and the information provided in this 104(e) response, and consider whether EPA will seek additional documents regarding #2(e) from Respondent.

Respondent interprets this question to seek information regarding the property identified by EPA as 700 South Riverside Drive, Seattle, Washington, and the properties identified by Respondent as 620 South Riverside Drive and 582 South Riverside Drive.

As indicated in response to #1(g), in the course of transshipping construction materials, moving stored construction materials, and moving, repairing, and maintaining equipment used in such activities and in construction projects, Respondent uses some materials at 700 South Riverside Drive, such as fuels (diesel and gasoline), lubricating oils, grease, hydraulic fluids, transmission fluids, filters, antifreeze, cleaning fluids, paints, etc. An inventory list of such materials is provided with this response as **Attachment 2**. Products containing hazardous substances, fuels, and oils used by Respondent at 700 South Riverside Drive and 620 South Riverside Drive (or delivered to 700 South Riverside Drive for use elsewhere) are summarized (by specific products and by quantities) in "Quarterly Hazardous Materials Control Reports." These reports also include volumes of waste oils gathered for off-site recycling by Waste Management. Copies of all such reports in Respondent's possession that have been generated from 2002 to the present are provided with the response as **Attachment 3**. All such materials and products containing hazardous substances have been handled carefully with any resulting wastes being containerized for proper off-site recycling and/or disposal. Respondent has not produced specific invoices or accounting documentation pertaining to Respondent's purchases of such materials, products, fuels, oils, and waste oil recycling services.

Construction and demolition debris generated during projects occurring at other locations has been delivered to 700 South Riverside Drive by barge for transshipment through 700 South Riverside Drive for recycling or disposal elsewhere. Such construction and demolition debris have included the following: scrap metal, timber pilings, lumber, concrete, and concrete floats with plastic and/or Styrofoam inserts. Such building and construction debris have not been transshipped or stored at 620 South Riverside Drive or at 582 South Riverside Drive.

Construction and demolition debris recycled or disposed from Respondent's construction projects are delivered to 700 South Riverside Drive by barges, generally in containers unless practical to handle the materials individually (e.g., timber pilings). Such containers and materials are carefully offloaded from the barges and transferred to trucks for transportation to off-site locations for recycling or disposal, all in compliance with applicable environmental laws. Respondent is aware of no instance in which any such construction and demolition debris has been spilled into the Lower Duwamish Waterway since Respondent's activities began at 700 South Riverside Drive on June 7, 2002. Note that, in response to #2(h), a copy of the pollution prevention plan applicable to Respondent's activities at the properties is provided with this response as **Attachment 8**.

Scrap metal is stockpiled at 700 South Riverside Drive, and is periodically picked up by metal recyclers, such as Seattle Iron & Metals. The only documentation possessed by Respondent regarding such scrap metal recycling results from the issuance of payment checks by the metal recyclers (i.e., the checks that are delivered to Respondent's bank for processing, and associated check "stubs" reflecting the payment amounts). Respondent has not produced such documents with this response.

Materials for disposal that are transshipped through 700 South Riverside Drive are characterized by waste type as required by form bills of lading provided by disposal contractors (Waste Management or Regional Disposal) that are prepared for each container of such materials. Timber pilings containing creosote that require special disposal are identified with waste profile #2349VC (previously waste profile #100446WA). Ordinary wastes, trash, etc. that do not require special disposal are identified with waste profile #ACH0003. Examples of such bills of lading, related Union Pacific trailer use agreements, and related notes are provided with this response as **Attachment 6**. Subsequently, the disposal contractors generate invoices for disposal charges, customer invoice summary reports, and weight tickets. Then Respondent issues checks to pay the invoices. Examples of such documents are provided with this response as **Attachment 7**.

In one project accomplished in 2003, dredged sediments from the Puget Sound Resources Superfund Site, Marine Sediments Unit, Remedial Action were delivered by barge to 700 South Riverside Drive and were transshipped through 700 South Riverside Drive for disposal at the Rabanco Roosevelt Regional Landfill. The project was accomplished pursuant to a Remedial Action Management Plan for Contract Number DACW67-03-C-0012, approved by EPA and the United States Army Corps of Engineers, and the activities were accomplished under on-site observation and supervision by Corps of Engineers personnel, in coordination with EPA's oversight activities. Respondent is aware of no instance in which any such dredged materials were spilled into the Lower Duwamish Waterway during that project. Pursuant to the applicable Remediation Action Management Plan, and pursuant to EPA and Corps of Engineers oversight,

protective measures were implemented and dredged sediments were handled to prevent spillage and/or releases of the dredged sediments during transfer from barges to sealed trucks and trailers at 700 South Riverside Drive. Respondent understands that, as a result of EPA's oversight and reporting requirements pertinent to that project, EPA possesses comprehensive reports and information regarding that project. Respondent has not produced documents regarding that project with this response.

- f. Provide all information on electrical equipment used at the facility, including transformers or other electrical equipment that may have contained polychlorinated biphenyls (PCBs).

Response: Respondent interprets this question to seek information regarding the property identified by EPA as 700 South Riverside Drive, Seattle, Washington, and the properties identified by Respondent as 620 South Riverside Drive and 582 South Riverside Drive. Furthermore, Respondent interprets this question to seek information regarding equipment used in the transmission of electricity (rather than equipment that uses electricity, such as office copier equipment, etc.).

Respondent is unaware of any electrical equipment located at those properties, including transformers or electrical equipment that contain, or may have contained, PCBs. Electricity is delivered to those properties by Puget Sound Energy utilizing its service lines running to those properties, and Respondent understands that transformers for such electrical transmission are located elsewhere and are not located on the properties. Respondent understands that the buildings at 700 South Riverside Drive have electrical panels with circuit breakers, etc. located in the buildings.

- g. Provide information on the type(s) of oils or fluids used for lubrication of machinery or other industrial purposes, and any other chemicals or products which are or may contain hazardous substances which are or were used at the facility for facility operations.

Response: Respondent interprets this question to seek information regarding the property identified by EPA as 700 South Riverside Drive, Seattle, Washington, and the properties identified by Respondent as 620 South Riverside Drive and 582 South Riverside Drive.

As indicated in response to #1(g), in the course of transshipping construction materials, moving stored construction materials, and moving, repairing, and maintaining equipment used in such activities and in construction projects, Respondent uses some materials at 700 South Riverside Drive, such as fuels (diesel and gasoline), lubricating oils, grease, hydraulic fluids, transmission fluids, filters, antifreeze, cleaning fluids, paints, etc. An inventory list of such materials is provided with this response as **Attachment 2**. Products containing hazardous substances, fuels, and oils used by Respondent at 700 South Riverside Drive and 620 South Riverside Drive (or delivered to 700 South Riverside Drive for use

elsewhere) are summarized (by specific products and by quantities) in "Quarterly Hazardous Materials Control Reports." These reports also include volumes of waste oils gathered for off-site recycling. Copies of all such reports in Respondent's possession that have been generated from 2002 to the present are provided with the response as **Attachment 3**.

- h. Provide any site drainage descriptions, plans or maps that include information about storm drainage which includes, but is not limited to, above or below surface piping, ditches, catch basins, manholes, and treatment/detention or related structures including outfalls. If available, also include information about connections to sanitary sewer.

With respect to past site activities, please provide copies of any stormwater or drainage studies, including data from sampling, conducted at these properties. Also provide copies of any Stormwater Pollution Prevention or Maintenance Plans or Spill Plans that may have been developed for different operations during the Respondent's occupation of the property.

Response: Respondent interprets this question to seek information regarding the property identified by EPA as 700 South Riverside Drive, Seattle, Washington, and the properties identified by Respondent as 620 South Riverside Drive and 582 South Riverside Drive. Respondent understands that, except for one storm water drain (containing an oil/water separator) located in the yard at 700 South Riverside Drive that discharges to the Lower Duwamish Waterway, the properties have no piping, ditches, catch basins, manholes, treatment/detention or related structures, or outfalls for storm drainage. Roof gutters and downspouts on the buildings at 700 South Riverside Drive drain to the ground surface. Respondent has no plans or maps of site drainage for the properties. Respondent has no stormwater or drainage studies pertinent to the properties.

A copy of the pollution prevention plan applicable to Respondent's activities at the properties is provided with this response as **Attachment 8**.

3. Information About Others

- a. Describe any business relationship you may have had with Harald Hurlen, Thomas Hurlen, Carl W. Wagner, Hurlen Construction, John McDowell, James and Glendonna Miller, Cascade Barge and Equipment LLC, DC Tooling, Hal Hurlen Construction, Reidel International, Willamette Western Corporation, Cascade Barge & Equipment, LLC and American Civil Constructors, Inc. regarding this property or operations thereon.

Response: Respondent interprets this question to seek information regarding the property identified by EPA as 700 South Riverside Drive, Seattle, Washington, and the properties identified by Respondent as 620 South Riverside Drive and 582 South Riverside Drive.

Harald Hurlen—Respondent has leased, and is leasing, the properties located at 700 South Riverside Drive and 620 South Riverside Drive from Harald L. Hurlen (see **Attachment 1**).

Thomas Hurlen—Respondent knows of no business relationship Respondent has had with Thomas Hurlen, if any.

Carl W. Wagner—Respondent knows of no business relationship Respondent has had with Carl W. Wagner, if any.

Hurlen Construction—Respondent acquired certain assets from Hurlen Construction Company via an asset purchase agreement dated June 1, 2002. One such asset was the right to use the name “Hurlen Construction.” That transaction also involved the assignment by Hurlen Construction Company to Respondent of a lease pertaining to the real properties at 700 South Riverside Drive and at 620 South Riverside Drive (see **Attachment 1**).

John McDowell—Respondent knows of no business relationship Respondent has had with John McDowell, if any.

James and Glendonna Miller—Respondent knows of no business relationship Respondent has had with James and Glendonna Miller, if any.

Cascade Barge and Equipment, LLC—Respondent has leased, and is leasing, the property located at 582 South Riverside Drive from Cascade Barge and Equipment, LLC.

DC Tooling— Respondent knows of no business relationship Respondent has had with DC Tooling, if any.

Hal Hurlen Construction—Respondent knows of no business relationship Respondent has had with Hal Hurlen Construction, if any.

Reidel International—Respondent knows of no business relationship Respondent has had with Reidel International, if any.

Willamette Western Corporation—Respondent knows of no business relationship Respondent has had with Willamette Western Corporation, if any.

American Civil Constructors, Inc. (“ACC”) is the corporate “parent” of Respondent. Since Respondent’s inception, Respondent has maintained its own separate and distinct corporate status and has observed all corporate formalities, including but not limited to maintaining Respondent’s control over Respondent’s daily operations and decision-making. ACC, and each of its other subsidiary entities, also have maintained all corporate formalities, including but not limited

to maintaining each such entity's control over its own daily operations and decision-making.

- b. Provide the names and last known address of any tenants or lessees, the dates of their tenancy and a brief description of the activities they conducted while operating on the above mentioned site.

Response: Respondent interprets this question to seek information regarding the property identified by EPA as 700 South Riverside Drive, Seattle, Washington, and the properties identified by Respondent as 620 South Riverside Drive and 582 South Riverside Drive. Respondent has been a tenant/lessee at 700 South Riverside Drive and at 620 South Riverside Drive since June 7, 2002. Respondent has been a tenant/lessee at 582 South Riverside Drive since July 2, 2006. Respondent lacks information regarding any other tenants at those properties, if any.

- c. If not already provided, identify and provide a last known address or phone number for all persons, including Respondent's current and former employees or agents, other than attorneys, who have knowledge or information about the generation, use, purchase, storage, disposal, placement, or other handling of hazardous materials at, or transportation of hazardous materials to or from, the Site.

Response: Respondent interprets this question to seek information regarding Respondent's activities at the property identified by EPA as 700 South Riverside Drive, Seattle, Washington, and at the properties identified by Respondent as 620 South Riverside Drive and 582 South Riverside Drive. Respondent objects to this request as overly broad, burdensome, and unreasonable, in that it is not possible for Respondent to identify all persons who may have knowledge or information about the generation, use, purchase, storage, disposal, placement, or other handling of hazardous materials at, or transportation of hazardous materials to or from, those properties.

Without waiver of the foregoing objections, Respondent responds as follows. Respondent's activities at 700 South Riverside Drive, 620 South Riverside Drive, and 582 South Riverside Drive have not involved, and do not involve, the generation, use, purchase, storage, or placement of hazardous materials at those properties. As indicated in response to #1(f) and 2(e), construction and demolition debris generated during construction projects occurring at other locations has been delivered by barge to 700 South Riverside Drive for transshipment through 700 South Riverside Drive for recycling or disposal elsewhere. In addition, as indicated in response to #2(g), Respondent's activities at 700 South Riverside Drive have involved the use of certain products that have or may have contained hazardous substances. All such products containing hazardous substances have been handled carefully with any resulting wastes being containerized for proper off-site recycling and/or disposal.

Individuals with knowledge or information regarding such matters include the following:

Clyde Joseph (206-763-1230), 700 South Riverside Drive, Seattle, Washington 98108.

Jeff Puls (206-763-1230), 700 South Riverside Drive, Seattle, Washington 98108.

Juan Garcia (206-763-1230), 700 South Riverside Drive, Seattle, Washington 98108.

Frank Scott (206-763-1230), 700 South Riverside Drive, Seattle, Washington 98108.

Todd Adams (206-763-1230), 700 South Riverside Drive, Seattle, Washington 98108.

Heidi Sannes (206-763-1230), 700 South Riverside Drive, Seattle, Washington 98108.

Herman Koempel (206-730-5898), 582 South Riverside Drive, Seattle, Washington 98108.

Wil Clark (206-730-5898), 582 South Riverside Drive, Seattle, Washington 98108.

Eric Reichelt (206-730-5898), 582 South Riverside Drive, Seattle, Washington 98108.

Scott McKellar (509-670-0044), 119 Water Street, Chelan, Washington.

Harald Hurlen, 21512 Miller Bay Road, Poulsbo, Washington 98370

4. Financial Information

- a. Provide true and complete copies of all federal income tax documents, including all supporting schedules, for 2002, 2003, 2004, 2005, and 2006. Provide the federal Tax Identification Number and, if documentation is not available, explain why in detail.

Response: Respondent interprets this question to seek the requested federal income tax returns pertinent to Respondent, consisting of the consolidated federal income tax returns for 2002, 2003, 2004, 2005, and 2006 for American Civil

Constructors Holdings Inc. and Subsidiaries (including Respondent)—copies of those returns are provided with this response as **Attachment A**.

Note that the federal income tax returns provided with this response as Attachment A contain confidential and proprietary business information (e.g., confidential commercial and confidential financial information, etc.). Pursuant to applicable provisions of the United States Code and Code of Federal Regulations (40 C.F.R. Part 2), Respondent designates those federal income tax returns as “confidential business information” and has provided copies of those materials as a separate attachment to this response that is marked as “confidential business information”—Attachment A.

- b. Provide the Respondent’s financial interest in, control, or that the Respondent is beneficiary of any assets (in the U.S. or in another country) that has not been identified in your federal tax returns or other financial information to be presented to EPA. If there are such assets, please identify each asset by type of asset, estimated value, and location.

Response: Respondent believes that all assets pertinent to Respondent (as well as assets pertinent to other entities) are addressed in the federal income tax returns provided with this response as **Attachment A**, and in the Consolidated Financial Statements (December 31, 2007 and 2006)(With Independent Auditor’s Report Thereon) for American Civil Constructors Holdings, Inc. and Subsidiaries (including Respondent), copies of which are provided with this response as **Attachment B**.

Note that the Consolidated Financial Statements provided with this response as Attachment B contain confidential and proprietary business information (e.g., confidential commercial and confidential financial information, etc.). Pursuant to applicable provisions of the United States Code and Code of Federal Regulations (40 C.F.R. Part 2), Respondent designates those Consolidated Financial Statements as “confidential business information” and has provided copies of those materials as a separate attachment to this response that is marked as “confidential business information”—Attachment B.

- c. If Respondent is, or was at any time, a subsidiary of, otherwise owned or controlled by, or otherwise affiliated with another corporation or entity, then describe the full nature of each such corporate relationship, including but not limited to:
- i. a general statement of the nature of relationship, indicating whether or not the affiliated entity had, or exercised, any degree of control over the daily operations or decision-making of the Respondent’s business operations at the Site;
 - ii. the dates such relationship existed;

- iii. the percentage of ownership of Respondent that is held by such other entity(ies);
- iv. for each such affiliated entity provide the names and complete addresses of its parent, subsidiary, and otherwise affiliated entities, as well as the names and addresses of each such affiliated entity's officers, directors, partners, trustees, beneficiaries, and/or shareholders owning more than five percent of that affiliated entity's stock;
- v. provide any and all insurance policies for such affiliated entity(ies) which may possibly cover the liabilities of the Respondent at the Site;
- vi. provide any and all corporate financial information of such affiliated entities, including but not limited to total revenue or total sales, net income, depreciation, total assets and total current assets, total liabilities and total current liabilities, net working capital (or net current assets), and net worth.

Response: Respondent is a wholly-owned subsidiary of American Civil Constructors, Inc. ("ACC"), which is wholly-owned by American Civil Constructors Holdings, Inc. ACC's current corporate structure includes one other subsidiary entity (Pavement Specialists, Inc.), which has had absolutely no relationship to 700 South Riverside Drive, 620 South Riverside Drive, 582 South Riverside Drive, or any other property within the Lower Duwamish Waterway Superfund Site. American Civil Constructors Holdings, Inc. has two other wholly-owned subsidiaries: ACC Canada Holdings, Inc. (with one subsidiary, American Civil Constructors Canada, ULC) and ACC North Holdings, Inc. (with one subsidiary, ACC North Equipment, ULC), all of which have had absolutely no relationship to 700 South Riverside Drive, 620 South Riverside Drive, 582 South Riverside Drive, or any other property within the Lower Duwamish Waterway Superfund Site.

i. For the entire duration of Respondent's existence and ownership by ACC, Respondent has maintained all corporate formalities, including but not limited to maintaining Respondent's control over Respondent's daily operations and decision-making. American Civil Constructors Holdings, Inc., ACC, and each of their respective other subsidiary entities, also have maintained all corporate formalities, including but not limited to maintaining each entity's control over its own daily operations and decision-making.

ii. Respondent has been a subsidiary of ACC since 2001.

iii. Respondent is 100% wholly owned by ACC.

iv. The following information is provided about ACC, American Civil Constructors Holdings, Inc., as the "parent" and "grandparent," respectively, of Respondent:

American Civil Constructors, Inc. ("ACC"), 225 Union Boulevard, Suite 500, Lakewood, Colorado 80228. Its director is John B. Sandman. Its officers are: John B. Sandman (Chief Executive Officer and President), Jeffrey Rudolph (Chief Financial Officer), Victoria T. Aguilar (Secretary), Cassandra M. Grant (Assistant Secretary), Jeff Puls (Treasurer), Eric Reger (Vice President), David L. Lemesany (Vice President), Todd Williams (Vice President), Randy Maher (Vice President), Todd Smith (Vice President), Larry A. Rice (Vice President), and Dan Hodson (Vice President).

American Civil Constructors Holdings, Inc., 225 Union Boulevard, Suite 500, Lakewood, Colorado 80228. Its directors are John B. Sandman, David G. Chandler, Richard L. Randall, Brian Shelton, Noel Wheeler, and William M. Kern. Its officers are: John B. Sandman (Chief Executive Officer and President), Jeff Puls (Vice President), Jeffrey Rudolph (Vice President, Secretary and Treasurer), Victoria T. Aguilar (Vice President and Secretary), and Cassandra M. Grant (Assistant Secretary).

The following information is provided about Pavement Specialists, Inc., as the other wholly-owned subsidiary of ACC, and thus as an indirectly "affiliated entity":

Pavement Specialists, Inc., 225 Union Boulevard, Suite 500, Lakewood, Colorado 80228. Its director is John B. Sandman. Its officers are: Dave Lemesany (Chief Executive Officer and President), Jeff Rudolph (Vice President and Secretary), Bert Sandman (Vice President and Assistant Secretary).

v. Respondent interprets this question to refer to "the Site" known as the Lower Duwamish Waterway Superfund Site. Respondent maintains that it has no "liabilities...at the Site." There is absolutely no basis for designating Respondent a "potentially responsible party" ("PRP") for the Site. There is absolutely no basis for asserting that Respondent is liable, or potentially liable, under CERCLA. EPA should conclude that Respondent is not a PRP for the Site based upon the information summarized in this response, and the complete lack of any evidence that Respondent's limited activities only since June of 2002, at 700 South Riverside Drive and 620 South Riverside Drive, and only since July 2, 2006, at 582 South Riverside Drive, have contributed any hazardous substances to the Lower Duwamish Waterway's sediments.

At this time, Respondent has not determined the applicability or possible applicability of insurance policies or coverage, if any. Please note that Respondent is providing copies of insurance policies with this response, as requested in #5(a).

vi. The information requested is provided in the copies of the consolidated federal income tax returns for 2002, 2003, 2004, 2005, and 2006 for American Civil Constructors Holdings Inc. and Subsidiaries provided with this response as **Attachment A**, and in the Consolidated Financial Statements provided with this response as **Attachment B**.

Note that the federal income tax returns and the Consolidated Financial Statements provided with this response as Attachments A and B, respectively, contain confidential and proprietary business information (e.g., confidential commercial and confidential financial information, etc.). Pursuant to applicable provisions of the United States Code and Code of Federal Regulations (40 C.F.R. Part 2), Respondent designates those federal income tax returns and Consolidated Financial Statements as “confidential business information” and has provided copies of those materials as separate attachments to this response that are marked as “confidential business information”—Attachments A and B.

5. Insurance Coverage

- a. Provide copies of all property, casualty and or liability insurance policies, and any other insurance contracts referencing the site or facility and or Respondent’s business operations (including, but not limited to, Comprehensive General Liability, Environmental Impairment Liability, Pollution Legal Liability, Cleanup Cost Cap or Stop Loss Policies). Include, without limitation, all primary, excess, and umbrella policies which could be applicable to costs of environmental investigation and or cleanup, and include the years such policies were in effect.

Response: Copies of Respondent’s insurance policies are provided on a compact disk with this response as **Attachment C**.

Note that the insurance policies provided with this response as Attachment C contain confidential and proprietary business information (e.g., confidential commercial and confidential financial information, etc.). Pursuant to applicable provisions of the United States Code and Code of Federal Regulations (40 C.F.R. Part 2), Respondent designates those insurance policies as “confidential business information” and has provided copies of those materials as a separate attachment to this response that is marked as “confidential business information”—Attachment C.

- b. If there are any such policies from question a. above of which existed, but for which copies are not available, identify each such policy by providing as much of the following information as possible:
- i. the name and address of each insurer and of the insured;

- ii. the type of policy and policy numbers;
- iii. the per occurrence policy limits of each policy; and
- iv. the effective dates for each policy.

Response: Respondent understands that this question is not applicable.

- c. Identify all insurance brokers or agents who placed insurance for the Respondent at any time during the period being investigated, as identified at the beginning of this request, and identify the time period during which such broker or agent acted in this regard.

Response:

Willis Corp. of Seattle (2002 to present)
505 Fifth Avenue South
Suite 200
Seattle, Washington 98104

Lamberson Koster & Co. (2004-2005)
580 California Street
Suite 1400
San Francisco, California 94104

Stewart Smith Environmental Specialists (2001-2002)
P.O. Box 111
Grand Rapids, Michigan 49501-0111

Gallagher Construction Services (2004-2005)
580 California Street
Suite 1200
San Francisco, California 94104

- d. Identify all communication and provide all documents that evidence, refer, or relate to claims made by or on behalf of the Respondent under any insurance policy in connection with the site. Include any responses from the insurer with respect to any claims.

Response: Respondent interprets this question to refer to the Lower Duwamish Waterway Superfund Site, and claims involving environmental liabilities for that site. This question is not applicable to Respondent at this time.

- e. Identify any previous settlements with any insurer in connection with the site, or for any claims for environmental liabilities during the time period under

investigation. Include any policies surrendered or cancelled by the Respondent or insurer.

Response: Respondent interprets this question to refer to the Lower Duwamish Waterway Superfund Site, and claims involving environmental liabilities for that site. This question is not applicable to Respondent.

- f. Identify any and all insurance, accounts paid or accounting files that identify Respondent's insurance policies.

Response: Copies of Respondent's insurance policies and related information are retained in pertinent insurance files located at 700 South Riverside Drive, Seattle, Washington, and at 225 Union Boulevard, Suite 500, Lakewood, Colorado. Records regarding payments made pertinent to insurance coverage are retained in pertinent accounting files located at 700 South Riverside Drive, Seattle, Washington, and at 225 Union Boulevard, Suite 500, Lakewood, Colorado.

- g. Identify Respondent's policy with respect to document retention.

Response: Respondent does not operate under a formal document retention policy.

6. **Compliance with This Request.** Describe all sources reviewed or consulted in responding to this request, including, but not limited to:

- a. the name and current job title of all individuals consulted.

Response: The following individuals were consulted in preparing this response: Clyde Joseph (Vice President and General Manager of Respondent); Frank Scott (Safety Manager of Respondent); Juan Garcia (Master Mechanic of Respondent); Heidi Sannes (Office Assistant of Respondent); Herman Koempel (formerly Controller of Respondent); Victoria Aguilar (Vice President of Human Resources and Legal Affairs of American Civil Constructors, Inc.); Cassandra Grant (Assistant Secretary of American Civil Constructors, Inc.); Jeff Puls (Treasurer of American Civil Constructors, Inc.); and Robert F. Bakemeier (counsel for Respondent).

- b. the location where all documents reviewed are currently kept.

Response: Documents in the possession, custody, and control of Respondent and of American Civil Constructors, Inc. were consulted in preparing this response. Such documents are currently kept at 700 South Riverside Drive, Seattle, Washington, and at 225 Union Boulevard, Suite 500, Lakewood, Colorado. In addition, Respondent's counsel reviewed certain materials contained in EPA's site file for the Lower Duwamish Waterway Superfund Site located at EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, including the 104(e) information

request response submitted to EPA by Harald Hurlen and Hurlen Construction. Information contained in that response was not incorporated into this response.

LIST OF ATTACHMENTS TO THIS RESPONSE:

Attachment 1—Lease for 700 South Riverside Drive and 620 South Riverside Drive.

Attachment 2—Inventory List of Materials.

Attachment 3—Quarterly Hazardous Materials Control Reports.

Attachment 4—Documents re April 23, 2008 Diesel Fuel Spill.

Attachment 5—Email Exchange, June of 2003, re Dredging in Approximately September of 1998.

Attachment 6—Bills of Lading for Waste Disposal and Related Documents (Examples).

Attachment 7—Invoices, Invoice Summary Reports, and Weight Tickets for Waste Disposal (Examples).

Attachment 8—Pollution prevention plan.

**LIST OF ATTACHMENTS TO THIS RESPONSE CONTAINING
CONFIDENTIAL BUSINESS INFORMATION:**

Attachment A—Federal Income Tax Returns (2002-2006).

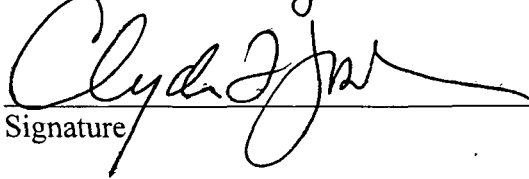
Attachment B—Consolidated Financial Statements (2007 and 2006).

Attachment C—Insurance Policies (2002-Present)(on compact disk).

DECLARATION

I declare under penalty of perjury that I am authorized to respond on behalf of Respondent American Civil Constructors West Coast, Inc., and that the foregoing response by Respondent to EPA's CERCLA Section 104(e) information request directed to American Civil Constructors, Inc. regarding the Lower Duwamish Waterway Superfund Site is complete, true, and correct, subject to the clarification provided in the General Introduction to this response, above.

Executed on July 3, 2008.


Signature

Clyde Joseph
Vice President and General Manager
American Civil Constructors West Coast, Inc.
700 South Riverside Drive
Seattle, Washington 98108